

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1975
<b>Ombudsman ID</b>	1002979
<b>Date of DIBP's reports</b>	13 July 2015 and 8 January 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

29 May 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 337 <i>Palana</i> . He was transferred to Facility C.
30 May 2012	Transferred to Facility D.
25 June 2012	Transferred to Facility E.
31 August 2012	Transferred to Facility F.
16 October 2012	Granted a Bridging visa and released from detention.
27 November 2013	Bridging visa cancelled following criminal charges. He was re-detained under s 189 and transferred to Facility G.

### Visa applications/case progression

13 August 2012	The former Minister lifted the bar under s 46A to allow Mr X to lodge a Protection visa application.
16 October 2012	The former Minister intervened under s 195A and granted Mr X a Bridging visa.
19 November 2012	Lodged a Protection visa application.
14 March 2013	A Five Country fingerprint check <sup>1</sup> was initiated.
15 March 2013	A fingerprint match in Country B was found and records indicated that Mr X had claimed asylum in Country B in 2002 and was removed from Country B to Country A on 20 July 2010.
27 November 2013	Bridging visa cancelled under s 116 following criminal charges.
28 November 2013	The Department of Immigration and Border Protection (DIBP) confirmed Mr X's identity.
20 January 2014	Protection visa application refused.

<sup>1</sup> In 2009 the Five Country Conference data sharing arrangement was implemented whereby biometric data, including fingerprints, may be shared between Australia, United Kingdom, United States of America, Canada and New Zealand.

21 January 2014	Appealed to the Refugee Review Tribunal (RRT).
22 April 2014	RRT affirmed original decision.
28 April 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
11 July 2014	Requested judicial review of the RRT's decision by the Federal Circuit Court (FCC). On the same day Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. <sup>2</sup>
14 January 2015	Found not to meet the guidelines for referral to the Minister under s 195A.
23 November 2015	The FCC dismissed the application for judicial review.
21 December 2015	DIBP lodged an application for a temporary travel document with the Country A High Commission.
8 January 2016	DIBP advised that it was continuing to progress Mr X's involuntary removal from Australia.

### **Criminal matters**

19 September 2013	While living in the community Mr X was charged with offences related to assault and stalking.
2 December 2013	The charges were dismissed as no evidence was provided.
29 September 2015	Mr X was involved in an alleged assault. The matter was subsequently referred to the Australian Federal Police (AFP) for further investigation. DIBP has advised that the matter is ongoing.

### **Health and welfare**

8 December 2013	A DIBP Incident Report recorded that Mr X was assaulted at Facility G, resulting in a bleeding nose, cut lip and a loose tooth. No further information was provided.
20 April 2014	A DIBP Incident Report recorded that Mr X collapsed on the floor complaining of head pain. No further information was provided.
21 May 2015	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined a referral for specialist counselling.
22 October 2015	Sustained a left eyebrow laceration and head injury after an alleged assault. IHMS provided him with first aid, wound care and head injury monitoring until he recovered.
26 November 2015	Advised his case manager he would rather kill himself than return to Country A after receiving negative news in relation to his immigration matters.

<sup>2</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

## Detention incidents

DIBP Incident Reports recorded that Mr X was the alleged offender in a sexual assault and a number of minor disturbances, as well as the alleged victim of minor assaults by other detainees.	
1 August 2014	<p>A DIBP Incident Report recorded that a detainee alleged that Mr X had repeatedly called her on her mobile telephone and touched her thigh inappropriately under the table when she was with a friend in a common area of Facility G.</p> <p>Mr X was interviewed by detention centre staff and reminded of his rights and responsibilities. He was also advised that his behaviour constituted sexual assault without consent. The victim did not want the matter referred to the police.</p>
16 September 2014	A DIBP Incident Report recorded that a detainee alleged that Mr X had assaulted her. No further information was provided.
29 September 2015	A DIBP Incident Report recorded that Mr X allegedly sexually assaulted a female detainee in the Facility G gym.

## Information provided by Mr X

During an interview with Ombudsman staff at Facility G on 10 November 2015 Mr X advised that he spent most of his time in his room worrying.

He said that he only left his room for meals but occasionally he took part in activities when he was feeling better. However, generally he did not socialise as he said he did not want to experience any problems in detention and tried to minimise contact with other detainees.

He said he no longer went to the IHMS medical centre as he felt he was not given appropriate medication for health issues. He explained that IHMS staff would only give him paracetamol for his headaches.

## Ombudsman assessment

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He has no matters before DIBP, the courts or tribunals and he is on a removal pathway.

On 27 November 2013 Mr X's Bridging visa was cancelled due to criminal charges and he was re-detained.

The Ombudsman notes that the charges were dismissed five days later, on 2 December 2013, due to a lack of evidence. However, Mr X has remained in restricted detention since this time due to alleged behavioural incidents and an AFP investigation. The Ombudsman makes no recommendations in this report.